



National Aeronautics and
Space Administration
Washington, DC 20546

Procurement Notice

PN 97-84
May 2, 2003

DEFINITIONS

BACKGROUND: This PN revises the NASA FAR Supplement (NFS) to amend the definitions of “contracting activity” and “head of the contracting activity” consistent with realignment of program management responsibilities between NASA Headquarters and the field centers.

On November 14, 2002, the Assistant Administrator for Procurement approved a deviation to NFS section 1802.101 to designate the Deputy Associate Administrator for the International Space Station (ISS) and Space Shuttle Programs in the Office of Space Flight as the head of the contracting activity (HCA) in lieu of the Center Director(s) for all contracts that directly support the ISS or Space Shuttle Program. This deviation was approved in support of the realignment of program management responsibilities between NASA Headquarters and the field centers. This PN implements this deviation.

ACQUISITIONS AFFECTED BY CHANGES: All contracts that directly support the International Space Station (ISS) or Space Shuttle Program.

ACTION REQUIRED BY CONTRACTING OFFICERS: Comply with the revised definitions of “contracting activity” and “head of the contracting activity (HCA)” whenever these are referred to in the FAR and NFS.

CLAUSE CHANGES: This PN makes no changes to clauses or provisions.

PARTS AFFECTED: Changes are made in Parts 1802, 1806, 1815, 1816, and 1843.

REPLACEMENT PAGES: You may use the enclosed pages to replace Part 1802, 6:5, 15:15, 15:16, 16:5, 16:6, and Part 1843.

TYPE OF RULE AND PUBLICATION DATE: The PN was published as a final rule in the Federal Register (68 FR 23423 - 23424) on May 2, 2003.

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Enclosures

PART 1802
DEFINITIONS OF WORDS AND TERMS

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PART 1802
DEFINITIONS OF WORDS AND TERMS

1802.000 Scope of part.

Commonly used words and terms are defined in FAR Subpart 2.1. This Part 1802 gives NASA-specific meanings for some of these words and terms and defines other words and terms commonly used in the NASA acquisition process.

Subpart 1802.1--Definitions

1802.101 Definitions.

“**Administrator**” means the Administrator or Deputy Administrator of NASA.

“**Senior Procurement Executive**” means the Assistant Administrator or Deputy Assistant Administrator for Procurement, Office of Procurement, NASA Headquarters (Code H).

“**Contracting activity**” in NASA includes the NASA Headquarters installation and the following field installations: Ames Research Center, Dryden Flight Research Center, Glenn Research Center at Lewis Field, Goddard Space Flight Center, Johnson Space Center, Kennedy Space Center, Langley Research Center, Marshall Space Flight Center and Stennis Space Center. A major program that may have contracts at multiple field centers may also be considered a “contracting activity.”

“**Head of the agency**” or “**agency head**” means the Administrator or Deputy Administrator of NASA.

“**Head of the contracting activity (HCA)**” means, for field installations, the Director or other head and, for NASA Headquarters, the Director for Headquarters Operations. For International Space Station (ISS) and Space Shuttle Program contracts, the HCA is the Headquarters Deputy Associate Administrator for ISS and Shuttle Programs in lieu of the field Center Director(s).

“**Procurement officer**” means the chief of the contracting office, as defined in FAR 2.101.

“**NASA Acquisition Internet Service (NAIS)**” means the Internet service (URL: <http://procurement.nasa.gov>) NASA uses to broadcast its business opportunities, procurement regulations, and associated information.

1806.304-70 Approval of NASA justifications.

Concurrences and approvals for justifications of contract actions conducted in accordance with FAR Subparts 6.2 and 6.3 shall be obtained as follows:

- (a) For proposed contracts over \$500,000 but not exceeding \$10,000,000 -
 - (1) Concurring official: Procurement Officer
 - (2) Approving official: Center or Headquarters Competition Advocate.
- (b) For proposed contracts over \$10,000,000 but not exceeding \$50,000,000 -
 - (1) Concurring officials:
 - (i) Procurement Officer
 - (ii) Center or Headquarters Competition Advocate
 - (2) Approving official: Head of the contracting activity
- (c) For proposed contracts over \$50,000,000 -
 - (1) Concurring officials:
 - (i) Procurement Officer
 - (ii) Center or Headquarters Competition Advocate
 - (iii) Head of the contracting activity.
 - (iv) Agency Competition Advocate
 - (2) Approving Official: Assistant Administrator for Procurement
- (d) The approval authority of FAR 6.304(a)(3) may not be delegated to other than the installation's Deputy Director.
- (e) For proposed contract actions requiring approval by the Assistant Administrator for Procurement, the original justification shall be forwarded to the Assistant Administrator for Procurement (Code HS).
- (f) Regardless of dollar value, class justifications shall be approved by the Assistant Administrator for Procurement.

Subpart 1806.5--Competition Advocates

1806.501 Requirement.

(1) The Deputy Assistant Administrator for Procurement is the agency competition advocate, reporting to the Associate Deputy Administrator on issues related to competition of NASA acquisitions.

(2) The Center Deputy Directors or Associate Directors are the competition advocates for their contracting activities.

(3) The Headquarters Chief Financial Officer, Code CF, is the competition advocate for the Headquarters contracting activity.

1806.502 Duties and Responsibilities.

(b)(i) Center competition advocates shall submit annual reports to the agency competition advocate (Code HS) on or before November 30.

(ii) The agency competition advocate shall submit an annual agency report on or before January 31.

- (i) Chairpersons of SEB committees, unless designated as voting members.
- (ii) The procurement officer of the installation, unless designated a voting member.
- (iii) The contracting officer responsible for the acquisition, unless designated a voting member.

- (iv) The Chief Counsel and/or designee of the installation.

- (v) The installation small business specialist.

- (vi) The SEB recorder.

(g) Evaluation.

(1) If committees are used, the SEB Chairperson shall send them the proposals or portions thereof to be evaluated, along with instructions regarding the expected function of each committee, and all data considered necessary or helpful.

(2) While oral reports may be given to the SEB, each committee shall submit a written report which should include the following:

- (i) Copies of individual worksheets and supporting comments to the lowest level evaluated;

- (ii) An evaluation sheet summarized for the committee as a whole; and

- (iii) A statement for each proposal describing any strengths, deficiencies, or significant weaknesses which significantly affected the evaluation and stating any reservations or concerns, together with supporting rationale, which the committee or any of its members want to bring to the attention of the SEB.

(3) The SEB process must be adequately documented. Clear traceability must exist at all levels of the SEB process. All reports submitted by committees or panels will be retained as part of the SEB records.

(4) Each voting SEB member shall thoroughly review each proposal and any committee reports and findings. The SEB shall rate or score the proposals for each evaluation factor and subfactor according to its own collective judgment. SEB minutes shall reflect this evaluation process.

(h) SEB presentation.

(1) The SEB Chairperson shall brief the SSA on the results of the SEB deliberations to permit an informed and objective selection of the best source(s) for the particular acquisition.

(2) The presentation shall focus on the significant strengths, deficiencies, and significant weaknesses found in the proposals, the probable cost of each proposal, and any significant issues and problems identified by the SEB. This presentation must explain any applicable special standards of responsibility; evaluation factors and subfactors; the significant strengths and significant weaknesses of the offerors; the Government cost estimate, if applicable; the offerors' proposed cost/price; the probable cost; the proposed fee arrangements; and the final adjectival ratings and scores to the subfactor level.

(3) Attendance at the presentation is restricted to people involved in the selection process or who have a valid need to know. The designated individuals attending the SEB presentation(s) shall:

- (i) Ensure that the solicitation and evaluation processes complied with all applicable agency policies and that the presentation accurately conveys the SEB's activities and findings;

- (ii) Not change the established evaluation factors, subfactors, weights, or scoring systems; or the substance of the SEB's findings. They may, however, advise the SEB to rectify

procedural omissions, irregularities or inconsistencies, substantiate its findings, or revise the presentation.

(4) The SEB recorder will coordinate the formal presentation including arranging the time and place of the presentation, assuring proper attendance, and distributing presentation material.

(5) For Headquarters selections, the Headquarters Office of Procurement (Code HS) will coordinate the presentation, including approval of attendees. When the Administrator is the SSA, a preliminary presentation should be made to the head of the contracting activity and to the Official-in-Charge of the cognizant Headquarters Program Office.

(i) Recommended SEB presentation format.

(1) Identification of the Acquisition. Identifies the installation, the nature of the services or hardware to be acquired, some quantitative measure including the Government cost estimate for the acquisition, and the planned contractual arrangement. Avoids detailed objectives of the acquisition.

(2) Background. Identifies any earlier phases of a phased acquisition or, as in the case of continuing support services, identifies the incumbent and any consolidations or proposed changes from the existing structure.

(3) Evaluation Factors, Subfactors, and Elements. Explains the evaluation factors, subfactor, and any special standards of responsibility. Lists the relative order of importance of the evaluation factors and the numerical weights of the Mission Suitability subfactors. Presents the adjectival scoring system used in the Mission Suitability and Past Performance evaluations.

(4) Sources. Indicates the number of offerors solicited and the number of offerors expressing interest (e.g., attendance at a preproposal conference). Identifies the offerors submitting proposals, indicating any small businesses, small disadvantaged businesses, and women-owned businesses.

(5) Summary of Findings. Lists the initial and final Mission Suitability ratings and scores, the offerors' proposed costs/prices, and any assessment of the probable costs. Introduces any clear discriminator, problem, or issue which could affect the selection. Addresses any competitive range determination.

(6) Significant Strengths, Deficiencies, and Significant Weaknesses of Offerors. Summarizes the SEB's findings, using the following guidelines:

(i) Present only the significant strengths, deficiencies, and significant weaknesses of individual offerors.

(ii) Directly relate the significant strengths, deficiencies, and significant weaknesses to the evaluation factors, and subfactors.

(iii) Indicate the results and impact, if any, of discussions and FPRs on ratings and scores.

(7) Final Mission Suitability Ratings and Scores. Summarizes the evaluation subfactors, the maximum points achievable, and the scores of the offerors in the competitive range.

(8) Final Cost/Price Evaluation. Summarizes proposed costs/prices and any probable costs associated with each offeror including proposed fee arrangements. Presents the data as accurately as possible, showing SEB adjustments to achieve comparability. Identifies the SEB's confidence in the probable costs of the individual offerors, noting the reasons for low or high confidence.

(9) Past Performance. Reflects the summary conclusions, supported by specific case data.

(10) Special Interest. Includes only information of special interest to the SSA that has not been discussed elsewhere, e.g., procedural errors or other matters that could affect the selection decision.

1816.402-2 Performance incentives.**1816.402-270 NASA technical performance incentives.**

(a) Pursuant to the guidelines in 1816.402, NASA has determined that a performance incentive shall be included in all contracts based on performance-oriented documents (see FAR 11.101(a)), except those awarded under the commercial item procedures of FAR Part 12, where the primary deliverable(s) is (are) hardware with a total value (including options) greater than \$25 million. Any exception to this requirement shall be approved in writing by the head of the contracting activity. Performance incentives may be included in hardware contracts valued under \$25 million acquired under procedures other than Part 12 at the discretion of the procurement officer upon consideration of the guidelines in 1816.402. Performance incentives, which are objective and measure hardware performance after delivery and acceptance, are separate from other incentives, such as cost or delivery incentives.

(b) When a performance incentive is used, it shall be structured to be both positive and negative based on hardware performance after delivery and acceptance, unless the contract type requires complete contractor liability for product performance (e.g., fixed price). In this latter case, a negative incentive is not required. In structuring the incentives, the contract shall establish a standard level of performance based on the salient hardware performance requirement. This standard performance level is normally the contract's minimum performance requirement. No incentive amount is earned at this standard performance level. Discrete units of measurement based on the same performance parameter shall be identified for performance above and, when a negative incentive is used, below the standard. Specific incentive amounts shall be associated with each performance level from maximum beneficial performance (maximum positive incentive) to, when a negative incentive is included, minimal beneficial performance or total failure (maximum negative incentive). The relationship between any given incentive, either positive and negative, and its associated unit of measurement should reflect the value to the Government of that level of hardware performance. The contractor should not be rewarded for above-standard performance levels that are of no benefit to the Government.

(c) The final calculation of the performance incentive shall be done when hardware performance, as defined in the contract, ceases or when the maximum positive incentive is reached. When hardware performance ceases below the standard established in the contract and a negative incentive is included, the Government shall calculate the amount due and the contractor shall pay the Government that amount. Once hardware performance exceeds the standard, the contractor may request payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When hardware performance ceases above the standard level of performance, or when the maximum positive incentive is reached, the Government shall calculate the final performance incentive earned and unpaid and promptly remit it to the contractor.

(d) When the deliverable hardware lends itself to multiple, meaningful measures of performance, multiple performance incentives may be established. When the contract requires the sequential delivery of several hardware items (e.g., multiple spacecraft), separate performance incentive structures may be established to parallel the sequential delivery and use of the deliverables.

(e) In determining the value of the maximum performance incentives available, the contracting officer shall follow the following rules.

(1) For a CPFF contract, the sum of the maximum positive performance incentive and fixed fee shall not exceed the limitations in FAR 15.404-4(c)(4)(i).

(2) For an award fee contract.

(i) The individual values of the maximum positive performance incentive and the total potential award fee (including any base fee) shall each be at least one-third of the total potential contract fee. The remaining one-third of the total potential contract fee may be divided between award fee and the maximum performance incentive at the discretion of the contracting officer.

(ii) The maximum negative performance incentive for research and development hardware (e.g., the first and second units) shall be equal in amount to the total earned award fee (including any base fee). The maximum negative performance incentives for production hardware (e.g., the third and all subsequent units of any hardware items) shall be equal in amount to the total potential award fee (including any base fee). Where one contract contains both cases described above, any base fee shall be allocated reasonably among the items.

(3) For cost reimbursement contracts other than award fee contracts, the maximum negative performance incentives shall not exceed the total earned fee under the contract.

1816.404 Fixed-price contracts with award fees.

Section 1816.405-2 applies to the use of FPAF contracts as if they were CPAF contracts. However, neither base fee (see 1816.405-271) nor evaluation of cost control (see 1816.405-274) apply to FPAF contracts.

1816.405 Cost-reimbursement incentive contracts.

1816.405-2 Cost-plus-award-fee (CPAF) contracts.

1816.405-270 CPAF contracts.

(a) Use of an award fee incentive shall be approved in writing by the procurement officer. The procurement officer's approval shall include a discussion of the other types of contracts considered and shall indicate why an award fee incentive is the appropriate choice. Award fee incentives should not be used on contracts with a total estimated cost and fee less than \$2 million per year. The procurement officer may authorize use of award fee for lower-valued acquisitions, but should do so only in exceptional situations, such as contract requirements having direct health or safety impacts, where the judgmental assessment of the quality of contractor performance is critical.

(b) Except as provided in paragraph (c) of this section, an award fee incentive may be used in conjunction with other contract types for aspects of performance that cannot be objectively assessed. In such cases, the cost incentive is based on objective formulas inherent in the other contract types (e.g., FPI, CPIF), and the award fee provision should not separately incentivize cost performance.

(c) Award fee incentives shall not be used with a cost-plus-fixed-fee (CPFF) contract.

1816.405-271 Base fee.

(a) A base fee shall not be used on CPAF contracts for which the periodic award fee evaluations are final (1816.405-273(a)). In these circumstances, contractor performance during any award

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fee period is independent of and has no effect on subsequent performance periods or the final results at contract completion. For other contracts, such as those for hardware or software

**PART 1843
CONTRACT MODIFICATIONS**

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**PART 1843
CONTRACT MODIFICATIONS**

Subpart 1843.2--Change Orders

1843.205 Contract clauses.

As authorized in the prefaces of clauses FAR 52.243-1, Changes- Fixed Price; FAR 52.243-2, Changes--Cost Reimbursement; and FAR 52.243-4, Changes, and in the prescription at 43.205(c) for FAR 52.243-3, Changes--Time-and-Material or Labor-Hours, the period within which a contractor must assert its right to an equitable adjustment may be varied not to exceed 60 calendar days.

1843.205-70 NASA contract clauses.

(a)(1) The contracting officer may insert in contracts a clause substantially the same as 1852.243-70, Engineering Change Proposals, when ECPs are expected. Paragraphs (c) and (d) of the basic clause and Alternate I of the clause shall be changed to reflect the specific type of contract.

(2) If it is desirable to preclude a large number of small-dollar, contractor-initiated engineering changes and to reduce the administrative cost of reviewing them, the contracting officer shall use the clause with its Alternate I.

(3) If the contract is a cost-reimbursement type, the contracting officer shall use the clause with its Alternate II.

(b) The contracting officer may insert a clause substantially as stated at 1852.243-72, Equitable Adjustments, in solicitations and contracts for –

- (1) Dismantling, demolishing, or removing improvements; or
- (2) Construction, when the contract amount is expected to exceed the simplified acquisition threshold and a fixed-price contract is contemplated.

Subpart 1843.70--Undefinitized Contract Actions

1843.7001 Definitions.

"**Undefinitized contract action (UCA)**" means a unilateral or bilateral contract modification or delivery/task order in which the final price or estimated cost and fee have not been negotiated and mutually agreed to by NASA and the contractor. (Issuance of letter contracts and their modifications are governed by Subpart 1816.6.)

1843.7002 Policy.

(a) Undefinitized contract actions may be issued only on an exception basis, and centers must ensure that NASA liabilities and commitments are minimized. When an undefinitized contract action is justified and program requirements can be severed into smaller, discreet efforts, the work authorized by the undefinitized contract action must be limited to the minimum severable effort required to satisfy the urgent program requirements. The remaining requirements may not be initially included in the undefinitized contract action and must be acquired through a separate fully priced and definitized contract action.

(b) The contract file for each UCA shall be documented to justify issuance and shall include a Government estimate for the changed requirements.

1843.7003 Procedures.

(a)(1) Issuance of undefinitized contract actions with a Government estimated cost or price over \$100,000 must be approved in writing by the head of the contracting activity.

(2) All other undefinitized contract actions must be approved in writing by the procurement officer.

(3) In emergency situations, approval may be given orally and subsequently confirmed in writing.

(4) The approval authorities in paragraphs (a)(1) and (2) of this section are not delegable.

(b)(1) Undefinitized contract actions exceeding \$100,000 must be issued as bilateral agreements setting forth a ceiling price or "not to exceed" estimated cost figure for the changed contractual requirements. For fixed price contracts the negotiated price for the changed contract requirements shall not exceed the established ceiling price. In the case of cost type contracts any costs eventually negotiated for the changed requirements in excess of the "not to exceed" estimated cost figure shall be non-fee bearing. The ceiling price or "not to exceed" estimated cost figures shall be separately identified in the UCA instrument from the pricing structure of the basic contract.

(2) The head of the contracting activity may waive the ceiling price or "not to exceed" estimated cost figure and bilateral agreement requirements prior to UCA issuance on the basis of urgency. This waiver authority is not delegable. Any waivers shall be documented in the contract file.

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(c) The changed contractual requirements set forth in the UCA shall be clearly defined and shall be limited to the minimum effort required to satisfy urgent program requirements while a cost proposal is prepared, analyzed and negotiated.

(d) For undefinitized contract actions with a Government estimate greater than \$1,000,000 and not excepted under subpart 1843.7004, a 180 day funding profile shall be obtained from the contractor prior to execution of the undefinitized contract action.

(e) Undefinitized contract actions with a Government estimated cost or price greater than \$1,000,000 shall include a requirement that the change shall be separately accounted for by the contractor to the degree necessary to provide the contracting officer visibility into actual costs incurred pending definitization. The contracting officer may waive this requirement for individual actions if there is a documented finding that such accounting procedures would not be cost effective. Any such waiver shall not affect existing NASA Form 533 or other financial reporting requirements set forth in the contract.

1843.7004 Exceptions.

(a) Exceptions to the requirement for head of the contracting activity or procurement officer approval of undefinitized contract actions are--

- (1) Modifications to facilities contracts;
- (2) Modifications to construction contracts using Construction of Facilities funding;
- (3) Urgent modifications resulting from Shuttle manifest changes or that involve immediate issues of safety or damage/loss of property;
- (4) Modifications to decrease the contract value; or
- (5) Modifications to letter contracts.

(b) The contract file for any of the modifications in paragraph (a) of this section shall cite the exception and include complete supporting rationale for its applicability.

1843.7005 Definitization.

(a) Undefinitized contract actions should be sufficiently complete and detailed as to enable the contractor to begin immediate preparation of a cost proposal for the changed requirement. The NASA goal is to definitize UCAs within 180 days from date of issuance.

(b) Whenever possible, pre-change study efforts or engineering change proposals (ECPs) shall be utilized to negotiate and definitize changes prior to issuance.

Subpart 1843.71--Shared Savings

1843.7101 Shared Savings Program.

This subpart establishes and describes the methods for implementing and administering a Shared Savings Program. This program provides an incentive for contractors to propose and implement, with NASA approval, significant cost reduction initiatives. NASA will benefit as the more efficient business practices that are implemented lead to reduced costs on current and follow-on contracts. In return, contractors are entitled to share in cost savings subject to limits established in the contract. The contracting officer may require the contractor to provide periodic reporting, or other justification, or to require other steps (e.g., cost segregation) to ensure projected cost savings are being realized.

1843.7102 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 1852.243-71, Shared Savings, in all solicitations and contracts expected to exceed \$1,000,000, except those awarded under FAR Part 12, NRA and AO procedures, or the SBIR and STTR programs.

